

REMARKS

This is responsive to the Office Action mailed on May 1, 2006. In the Office Action, claims 1-8 were allowed, claims 9-19 were rejected and claims 20-22 were objected to. Claim 22 is amended. The application includes claims 1-22.

The Office Action also objected to the drawings since reference element "73" which was mentioned in the description could not be found in the drawings. Enclosed with this Response is a Replacement Sheet of Figure 2 with the reference element 73. It is requested that the objection to the drawings be withdrawn.

The Office Action objected to claim 22 as having informalities. Applicants have amended claim 22 as suggested in the Office Action. Applicants respectfully request the objection be withdrawn with respect to amended claim 22.

The Office Action rejected claim 19 under 35 U.S.C. § 102(b) as being anticipated by Whitt U.S. Patent No. 4,373,709. The Office Action alleges that the Whitt patent discloses a surgical limb holder that can be used to hold a limb in any position, the holder mounted to a surgical table having a support 11, arms 29 and a flexible strap 42 to restrain a lower portion of a leg or "lower leg" (col. 1, lines 19-21).

In order for a claim to be anticipated by a reference, each and every element of the claim must be found in the reference. It is clear from the Whitt patent in Figure 1 that a lower leg portion is not being retained by the device as shown in Figure 1. What is being retained in the Whitt patent is the thigh. Although the phrase "the lower leg" is not specifically defined in the present application, it is understood that this is the portion of the anatomy that is below the knee joint. See Exhibits A, B and C attached to this Amendment After Final which are copies of websites that describe the anatomy of the leg. The area above the knee is generally referred to as the thigh area. To ensure clarity in this application, the area below the knee has been referred to as "the lower leg". Therefore the phrase "lower leg" in the claims refers to that portion of the leg below the knee.

Claim 19 also defines the retractor support as being mounted to the surgical table and having first and second arms that are extendable along opposite sides of the knee. There is

no disclosure in the Whitt patent of the defined structure. Rather, the Whitt patent discloses an upwardly extending generally U-shaped support that engages the circumference of the thigh. The support disclosed in the Whitt patent is not extendable along opposite sides of the knee as claimed.

Claim 19 also defines the present invention as having a flexible strap extending between the distal end portions of the support arms for engaging the lower leg to provide a generally downward force against the lower leg to retain the lower leg in position. The strap disclosed in the Whitt patent is not utilized to provide a downward force to the thigh. Rather the strap may be utilized to further restrain a limb. See Col. 3, lines 23-25. The restraint strap retains the thigh in the generally U-shaped support and does not provide a downward force to retain the lower leg in position as claimed.

For the foregoing reasons claim 19 is not anticipated by the Whitt patent. Reconsideration and allowance of claim 19 are respectfully requested.

Claims 20 and 21 were objected to as being dependent upon a rejected base claim. However, applicants believe that claims 20 and 21 are in allowable form because claim 19 is not anticipated by the Whitt patent. Reconsideration and allowance of claims 20 and 21 are respectfully requested.

The Office Action rejected claims 9-16 as being anticipated by Fowler Jr. U.S. Patent No. 6,190,312 (hereinafter the '312 patent) in view of Fowler U.S. Patent No. 5,964,698 (hereinafter the '698 patent) and Greishaber U.S. Patent No. 4,813,401 (hereinafter the '401 patent). The Office Action alleges that the '312 patent discloses a conventional and variable geometry retractor frame with arms 12a and 12b and a retractor stay apparatus attached to an elastic member is received in a notch of a member attached to the frame. The Office Action also alleges that the '312 patent discloses all the elements of the claimed invention except for the frame being attached to the rail of the surgical table and a retractor stay apparatus such as a blade.

The Office Action further alleges that retractor stay member such as paddles or "blades" and hooks attached to elastic members are well known and are shown at Figure 6 and col. 1, lines 44-52.

The Office Action also alleges that the '401 patent teaches supporting a retractor frame by mounting it to a rail of a surgical table at Fig.1 and columns 5 and 6.

The Office Action concludes that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to have provided the stay members such as blades in the '312 patent since stay members are well known in the art for retracting tissue. The Office Action also alleges that it would have been obvious to one of ordinary skill in the art at the time that the invention was made to mount the retractor apparatus of the combined '312 patent and the '698 patent to an operating table, as taught by the '401 patent, as it is common knowledge in the retracting art to support a conventional retractor frame by mounting it a surgical table.

Applicants respectfully disagree that claim 9 is made obvious by the '312 patent in view of the '698 patent and the '401 patent as there is no teaching or suggestion to combine the '312 patent with the '401 patent. The '312 patent discloses that the retractor frame is conformed to fit a surface of the patient's body at a surgical site. (Col. 4, lines 59-63 and Col. 8, lines 13-14). Positioning the retractor frame on the patient's body supports the retractor frame proximate the surgical site. An elastic member that is utilized to retract flesh is secured to the retractor frame supported by the patient's body. The retractor frame supported by a patient provides adequate support for the elastic member that is utilized to retract flesh.

There is no teaching in the '312 patent that the retractor frame could be mounted to a table. Rather, the '312 patent only discloses a retractor frame supported by the patient's body that retains an elastic member that is utilized to retract flesh.

In contrast to the '312 patent, the 401 patent discloses a table mounted retractor support that supports retractors with rigid handles. There is no teaching in the '312 that would lead one of ordinary skill in the art to combine a reference that discloses a retractor frame that is supported by the patient's body and utilized to secure an elastic member with a table mounted retractor support that is utilized to secure retractors with non-elastic handles.

The Office Action improperly utilized the claimed invention as a road map to combine the '312 patent with the '401 patent and the '698 patent to allege that claim 9 is obvious. Reconsideration and allowance of claim 9 are respectfully requested.

The Office Action also rejected dependent claims 10-16 as being obvious over the '312 patent in view of the '401 patent and the '698 patent. Since claim 9 is in allowable form, claims 10-16, which depend from independent claim 9, are also in allowable form. Reconsideration and allowance of claims 10-16 are respectfully requested.

Claim 17 was rejected under 35 U.S.C. § 103(a) as being obvious over the Whitt patent. The Office Action alleges that because the Whitt patent discloses that the limb holder 10 can be utilized in any position that will enhance and facilitate surgery (Col. 1, lines 6-22) and therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized the limb holder 10 to restrain the lower leg or "tibia" to provide support without discomfort.

Applicants respectfully disagree that claim 17 is made obvious by the Whitt patent. It would make no sense to use the structure disclosed in Whitt to support the lower leg. The joint (knee) could not be flexed and fully bent as necessary during the operating procedure discussed in Whitt (column 3, lines 17-22). The structure of Whitt has the "important advantage" of "arranging and holding the limb 35 over the edge (i.e. dangling over) of the operating table 37. This permits the joint to be flexed and fully bent as necessary during the operating procedures" *Id.* If the lower leg was secured in the structure of Whitt, it could not be bent because the support structure provides an upward force to the leg. An upward force is the opposite of the downward force as claimed in claim 17.

Further, there is no disclosure in the Whitt patent of positioning first and second arms of a retractor support along opposite sides of the knee. It would not make sense to position the U-shaped support as disclosed in the Whitt patent underneath the knee joint with the side arms extending upward around the knee joint as access to the knee joint would be obscured by the support. Additionally, it is unclear how the apparatus could be positioned about the knee while maintaining the knee in an elevated and bent position as claimed.

For the forgoing reasons claim 17 is not made obvious by the Whitt patent. Reconsideration and allowance of claim 17 are respectfully requested.


Claims 18 and 22 depend from independent claim 17. Since claim 17 is in allowable form, claims 18 and 22 are also in allowable form. Reconsideration and allowance of claims 18 and 22 are respectfully requested.

In view of the above, it is requested that all of the claims in the present application be reconsidered and a Notice of Allowance be issued thereon.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By: 
Z. Peter Sawicki, Reg. No. 30,214
Suite 1400 - International Centre
900 Second Avenue South
Minneapolis, Minnesota 55402-3319
Phone: (612) 334-3222 Fax: (612) 334-3312

ZPS:cnn